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VIA EFILING AND HAND DELIVERY

May 22, 2007

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
P.O. Drawer 11649
Columbia, South Carolina 29211

Docket No. 2007-187-C - Level 3 Communications, LLC's Tariff No. 4 - Revisions to Update the Rates for Switched Access Services

Dear Mr. Terreni:

The South Carolina Office of Regulatory Staff (ORS) has reviewed the referenced filing. Through this filing, Level 3 Communications, LLC has proposed a significant increase in its Switched Access Charges. The Office of Regulatory Staff is concerned about this proposal and issues related to the matter.

This filing was made without the inclusion of any supporting documentation. While the Commission has not generically addressed the switched access rates charged by Competitive Local Exchange Carriers (CLECs), the Commission has generally addressed the level of switched access rates in its USF Order No. 2001-419. In this order the Commission found that an appropriate level for switched access rates was $0.03 per minute and thus required all incumbent local exchange carriers to reduce their switched access rate to this level. This action further reduced the differential between intrastate and interstate switched access rates and removed implicit subsidies contained in incumbent local exchange carriers' (ILECs') switched access rates. The ORS has generally taken the position that a composite rate (originating and terminating) of $0.03 minutes is an appropriate rate level for the setting of switched access and has suggested this as an appropriate rate level for switched access rates to CLECs. The ORS seeks clarification as to whether this is an appropriate interpretation of the intent of setting the composite switched access rates at $0.03. Differences between access charges lead to other issues.

One important issue is arbitrage. Generally, when access rates are different, this provides an incentive for carriers to implement procedures to inflate the number of minutes associated with the higher switched access rates levels. Additionally, if there is significant disparity in CLEC rates and the ILEC rates in a particular area, interexchange carriers may refuse to offer its

services to the CLEC customers. This type of reaction to high access charges disrupts the competitive market place through the elimination of alternative carriers from consumers' consideration. While these type issues persist, the Federal Communications Commission (FCC) established requirements intended to address the level of CLEC's access rates.

The FCC addressed CLECs' interstate access charges in its Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC 01-146, released on April 27, 2001, CC Docket No. 96-262. In this decision, the FCC established procedures to address just and reasonable access charges for competitive local exchange carriers. In Paragraph 3 of this Order, the FCC states its objective which follows:

> Our goal in this process is ultimately to eliminate regulatory arbitrage opportunities that previously have existed with respect to tariffed CLEC access services. We accomplish this goal by revising our tariff rules more closely to align tariffed CLEC access rates with those of the incumbent LECs. Under the detariffing regime we adopt, CLEC access rates that are at or below the benchmark that we set will be presumed to be just and reasonable and CLECs may impose them by tariff. Above the benchmark, CLEC access services will be mandatorily detariffed, so CLECs must negotiate higher rates with the IXCs. During the pendency of negotiations, or if the parties cannot agree, the CLEC must charge the IXC the appropriate benchmark rate. We also adopt a rural exemption to our benchmark scheme, recognizing that a higher level of access charges is justified for certain CLECs serving truly rural areas.

Further, in paragraph 45 of its Order, the FCC shared the following concerning its proposed benchmark:

> Thus, in setting the level of our benchmark, we seek, to the extent possible, to mimic the actions of a competitive marketplace, in which new entrants typically price their product at or below the level of the incumbent provider. We conclude that the benchmark rate, above which a CLEC may not tariff, should eventually be equivalent to the switched access rate of the incumbent provider operating in the CLEC's service area.

The ORS understands that similar requirements have been implemented in other states which require CLECs to set their intrastate access rates at the incumbent local exchange carrier's intrastate rate levels. In fact, the level of switched access rates charged by competitive local exchange rates is currently being considered by Virginia Corporation Commission through a proposed rulemaking dated April 30, 2007.

In summary, the ORS recommends that the Commission address access rates charged by CLECs. Further, the Commission should consider requiring CLECs to set their intrastate access rates no greater than their interstate access rates or at a level no greater than the ILEC's access rates serving the area in which the CLEC is competing. Review of the access charges charged by CLECs may require time because the Commission will likely require input from interested parties. As an interim measure the Commission may, as a point of clarification, establish a $0.03

composite switched access rate for CLECs. The Commission has previously determined the composite $0.03 switched access rates appropriate for incumbent local exchange carriers.

Should you have questions concerning this matter, please advise.

Sincerely,

Nanette S. Edwards

Nanette S. Edwards

cc: Steven W. Hamm, Esq.
Victoria Mandell, Esq.